

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 1083 (M/S) 2004

Gurubachan Singh,
S/o Shri Ram Singh & Others Petitioners
Versus

Deputy Director of Consolidation/
Additional District Magistrate
(F/R) Udham Singh Nagar & Others..... Respondents

ALONG WITH

Civil Writ Petition No. 1084 (M/S) 2004

Smt. Achhar Kaur & others Petitioners
Versus

Deputy Director of Consolidation/
Additional District Magistrate
(F/R) & Others Respondents

AND

Civil Writ Petition No. 1231 (M/S) 2004

1. Guljar Singh
2. Swarn Singh
3. Santhokh Singh
4. Trilok Singh
All sons of late Sh. Mohan Singh
R/o Vill. Jagannath Pur, The. Kashipur
Distt.- Udham Singh Nagar. Petitioners

Versus

1. Deputy Director of Consolidation/
Additional District Magistrate (F.R.)
Udham Singh Nagar, Distt- Udham Singh Nagar.

2. Gurbachan Singh

S/o late Sh. Ram Singh & Others..... Respondents

Mr. Jagdish Prasad/Mr. M.S. Pal, learned counsel
for the petitioners (in writ petition no. 1083 of 2004).

Mr. Alok Singh, Sr. Advocate assisted by Jagdish Prasad,
learned counsel for the petitioners (in writ petition no. 1084).

Mr. M.C. Bansal, Advocate, learned counsel for
the petitioners (in writ petition no. 1231 of 2004).

Mr. M.C. Kandpal, Sr. Advocate assisted by
Mr. Afasar Ali, learned counsel for respondents.
Mr. Dharam Veer, Sr. Advocate assisted by B.S. Parihar,
learned counsel for the respondents.

Hon'ble Prafulla C. Pant, J.

All these three writ petitions have been filed challenging the judgment and order dated 20.10.2004 passed by Shri H.C. Semwal, Dy. Director of Consolidation/Additional District Magistrate, Udham Singh Nagar, whereby he has disposed of the revision re-numbered as No. 52/230 of the year 2000-01 under section 48 of U.P. Consolidation of Holdings Act, 1953, partly dismissing the same and directing the Consolidation Officer to allot the chaks as directed in the order.

2) Learned counsel for the parties in all the three writ petitions requested to hear and to dispose of the cases as the parties are set to take over possession of the chaks. . Accordingly, all the three writ petitions were taken up together and are being disposed of by this common judgment after hearing the parties.

3) Brief facts relating to disputes raised through aforesaid three writ petitions are that a notification under section 4 (1) of U.P. Consolidation of Holdings Act, 1953, issued in respect of Village-Jagnnath Pur, Tehsil-Kashipur, Distt. Udham Singh Nagar, in the year 1970. It appears that the proceedings under

section 9 A (2) of the said Act were drawn and the Consolidation Officer passed an order dated 26.06.1974 by which objections were disposed of. Thereafter the appeal was preferred before Settlements Officer of Consolidation, who disposed of the matter at his level vide his order dated 28.11.1974. Aggrieved by the said order, the revisions were filed before Dy. Director of Consolidation, who dismissed the revisions, vide his order dated 07.07.1975. Shri Mohan Singh (father of the petitioners of writ petition no. 1231/04) filed a writ petition no. 7625 of 1975 before Allahabad High Court, challenging the order dated 07.07.1975 of the Dy. Director of Consolidation. The Allahabad High Court, vide its order dated 17.10.79 allowed the writ petition and quashed the said order dated 07.07.1975 with the direction to Dy. Director of Consolidation to consider the cases of the parties afresh. In compliance of said Direction, the Dy. Director of Consolidation after hearing the parties has passed the impugned order dated 20.10.2004, aggrieved by which these three writ petitions were now filed.

4) In writ petition no. 1083 of 2004, petitioners Gurubachan Singh & others have pleaded that before the enforcement of U.P. Zamindari Abolition and Land Reform Act, 1950, the provisions of U.P. Tenancy Act, 1939 were applicable in Vill-Jagannath Pur. It is alleged that on 29th April, 1950, late Ram Singh, father of the petitioner no. 1 purchased 101 Bighas 3 Biswas from Zamindar Chaube Jai Kishan (copy of the sale deed-Annexure-1 to the writ petition no. 1083/04). By means of another registered lease deed dated 29.04.1950, Shri Ram Singh, father of said petitioner (of writ petition no. 1083) took 185 Bighas of land from late Radhey Shyam, another zamindar (copy of said deed-Annexure-2 to the writ petition). One Bhan Singh, son of Bachan Singh had also got transferred his 101

Bighas 4 Biswas of land through registered lease deed from Chaube Jai Kishan on the same day. But he let it out to one Ram Bheja and five others who were sons of Pandit Kaka Ram (copy of lease deed- Annexure 3 to the writ petition). It is further alleged that the said Bhan Singh had let out 93 Bighas of land by means of another lease deed dated 10.07.1957 to Ram Lal and others (copy Annexure-4 to the writ petition). Thereafter, it is alleged that Ram Bheja, Ram Lal, Deena Nath, Hukam Chand, Suraj Prakash and Ved Prakash let out 193 Bighas of land to late afore said Ram Singh on 18.05.1955 (copy of lease deed –Annexure 5 to the writ petition). Out of his holding, Shri Ram Singh, father of petitioner no. 1 (writ petition no. 1083/04) transferred 64 Bighas of land to one Hari Singh (copy of lease deed –Annexure 6 to the writ petition). As such, the petitioners of this writ petition have claimed that their father owned 479 Bighas of land. It is further alleged in the writ petition that one Purshottam Singh who happened to be nephew of afore mentioned Ram Singh had 11.2 acres of land recorded in his name, which was given to him in family partition. It is further alleged that all recorded tenure holders moved an application for affected partition, and the Consolidation Officer, vide his order dtd 26.06.1974 divided the land among the co-sharers, whereby late Ram Singh was given 38 acres, Shri Hari Singh was given share of 11 acres and Purshottam Singh was given 15 acres of land, in all 64 acres of land (copy of the said order- Annexure-10 to the writ petition). Late Ram Singh field an appeal under section 11 of U.P. Consolidation of Holdings Act, 1953 whereby, Settlement Officer of Consolidation confirmed the order of Consolidation Officer, vide his order dated 28.11.1974. Thereafter, Shri Ram Singh as well as Mohan Singh (father of the petitioners of writ petition no. 1231/04) filed revisions before Dy. Director of Consolidation, under section 48 of the aforesaid Act, which

were dismissed as mentioned earlier vide order dated 07.07.1975. Against which Shri Mohan Singh filed the writ petition no. 7625 of 1975 which was allowed as mentioned earlier. The impugned order dated 20.10.2004 has been challenged by the petitioners of writ petition no. 1083 of 2004 on the ground that the respondent no. 1 has ignored the fact that late Ram Singh owned 479 Bighas of land through the registered lease deed and also on the ground that family settlement of Hari Singh has not been taken into consideration. It is further alleged in this writ petition that the findings of the fact that Ram Singh transferred 92 Bighas to Kartar Singh has wrongly been arrived at.

4) In civil Misc. Writ petition No. 1084 (M/S) 2004, the petitioners have alleged that on 29th April, 1950 late Saudagar Singh, S/o Atar Singh obtained 278 Bighas of land through patta from the then zamindar, Lala Radhey Shaym (copy Annexure-2 to writ petition no. 1084). It is alleged that in the basic year of 1376 to 1378 fasli (year- 1960 to 62) names of Sunta Singh (husband of petitioner no. 1) and Sardool Singh (husband of petitioner no. 8 and father of petitioner no. 2,7,9,10 and 11 of this writ petition) were recorded (copy of Khatauni-Annexure 2 to this writ petition). It is further alleged that name of Sunta Singh, while 11.80 acres was recorded in the name of Sardool Singh, both of whom got this land from Saudagar Singh during his life time. During the Consolidation operation, the Consolidation Officer vide his order dated 26.06.1974 divided the shares and Sunta Singh who was given 26 acres while Sardool Singh was given 18 acres. It is alleged that though Ram Singh filed an appeal against the said order, the same was confirmed by the Settlement Officer of Consolidation vide his order dated 28.11.1974 on which late

Ram Singh and Sardar Mohan Singh (father of petitioners of writ petition no. 1231) preferred revisions before the Dy. Director of Consolidation, which were dismissed as mentioned earlier on 07.10.1975, and said order was quashed vide order dated 17.10.1979 passed in writ petition no. 7625 of 1975 filed by Mohan Singh, Thereafter, through the impugned order dated 20.10.2004, the Dy. Director of Consolidation has shown only 91 Bighas 18 biswas of land belonging to the petitioners. It is also alleged in this writ petition that petitioners were entitled to 161 bighas of land (26.75 acres). It is further alleged that Jagir Singh, S/o Atma Singh has wrongly been directed to be entitled to 92 bighas 17 biswas of land. The petitioners of this writ petition have alleged that Jagir Singh, S/o Atma Singh though did not file any objection under section 9 (A) of U.P. Consolidation of Holdings Act, 1953 was also given land, out of the land earlier owned by Saudagar Singh. The impugned order has been challenged by the petitioners alleging that their shares have been wrongly reduced.

5) In writ petition no. 1231 of 2004, petitioners (Gulzar Singh, Swarn Singh, Santhokh Singh and Trilik Singh-all sons of Mohan Singh) have alleged that their father along with Ram Singh and Bhan Singh from Chaube Jai Kishan, purchased 302 bighas 12 biswas land through lease deed dated 29.04.1950 and share of Mohan Singh was 100 bigha. It is further alleged that Mohan Singh along with Ram Singh, Atma Singh, Sohan Singh, Saudagar Singh obtained 1486 bigha and .06 biswa land on patta Dewami on 20.04.1950 from zamindar Lala Radhey Shyam, on the basis of which Mohan Singh was mutated in the revenue record. It is further alleged that Mohan Singh acquired Bhumidhari land through sale deed dated 29.05.1950 and Sirdari land through the patta Dawami dated 20.05.1950 not only for himself but also for Kartar Singh, Hazara Singh and

Ganga Singh, It is further alleged that at the time of verification of entries of annual register, no mistake or dispute were discovered under section 8 of U.P. Consolidation of Holding Act, 1953. In the writ petition, petitioners have alleged that Ram Singh, Atma Singh, Sohan Singh, Sardool Singh and others filed objections before the Consolidation Officer on which the Consolidation Officer directed that the shares of tenure holders be determined according to the orders dated 31.08.1959 of Sub-Divisional Officer. The aforesaid persons moved an application under section 33 & 39 of Land Revenue Act for correction of papers showing the shares in the land. The Consolidation Officer, Kashipur rejected objections, vide his order dtd 31.03.1971, commanding the basic year entries to be acted upon regarding all the khatahs. Against said order, it is alleged that Gopal Singh filed an appeal before Settlement Officer of Consolidation by which the order of the Consolidation Officer was set aside. As mentioned earlier, Mohan Singh filed Revision before Dy. Director of Consolidation, who vide his order dated 08.07.1973, allowed the revision and remanded the matter to the Consolidation Officer, Kashipur. Consolidation Officer, as mentioned earlier, vide his order dated 26.06.1974 decided the matter, observing the basic year entries have nowhere been challenged by anybody. Whereafter, as mentioned earlier, two appeals were filed against the said order before Settlement Officer of Consolidation and thereafter the revision was filed before Dy. Director of Consolidation and then after decision in writ petition no. 7625 of 1975 finally the impugned order was passed. The petitioners of writ petition no. 1231 (M/S) of 2004 have challenged the impugned order dated 20.10.04 passed by Dy. Director of Consolidation on the ground that the Addl. District Magistrate had no power to decide the revision as Dy. Director of Consolidation, for the reason notification issued by the State

of U.P. ceased to operate after creation of Uttaranchal. It is also alleged in his writ petition that the impugned order was passed in disregard to the directions given by the Allahabad High Court, vide its order dated 17.10.79 in writ petition no. 7625 of 1975. It is further alleged that basic year entries cannot be disturbed and no new case can be set up by the Revisional Court.

6) Counter affidavits have been filed by respondent no. 2 to 5, 18,19,27 to 38 of writ petition no. 1083 (M/S) 2004 and respondent no. 10 to 39 of writ petition no. 1084 (M/S) 2004 (who are also respondents in writ petition no. 1231 (M/S) 2004) in which facts relating to Consolidation operations are not disputed and it is stated that late Shri Ram Singh, Shri Mohan Singh and Shri Bhan Singh purchased 302 Bighas 17 Biswas of land in equal shares from Chaube Jai Kishan through sale deed dated 29.04.1950. It is further stated that Ram Singh gave his share to Hari Singh in his life time but Narendra Pal Singh (petitioner of writ petition no. 1083 (M/S) 2004) got prepared false statement and mutated his name. In respect of 1486 bighas 1 biswa land which was taken on lease from Radhey Shyam, vide lease deed dated 20.04.1950, it is stated that same was taken together by six persons namely Mohan Singh, Atma Singh, Sohan Singh, Saudagar Singh, Bhan Singh and Ram Singh. It is further stated that Shri Ram Singh had given 92 Bighas of land to Kartar Singh and 91 Bighas to Udham Singh. The contesting respondents have stated through their counter affidavits filed in writ petition no. 1083 (M/S) 2004 that Bhan Singh S/o Bachan Singh received only 10 Bigha 19 biswas from Chaube Jai Kishan which was let out to one Ram Lal, Ram Bheja, Dina Nath, Hukam Chand, Ved Prakash and Suraj Prakash, 0 and out of 185 bighas 18 biswas, the share of Bhan Singh, 54 Bighas 4 Biswas land was given to Gopal Singh (father of respondent no.

18 and 19 of writ petition no. 1083 (M/S) 2004) through registered lease deed, copies of which are filed as Annexure-CA-3 and CA-4. Bhan Singh also gave 92 Bighas land to Chanan Singh and remaining share of Bhan Singh is in the possession of Sunta Singh, S/o Sardool Singh (father of respondent no. 33 to 38 to writ petition no. 1083 (M/S) 2004) which is recorded in the revenue papers. It is also stated that Ram Bheja and others have no right to transfer 193 bighas of land as alleged by the petitioners. With regard to the 479 bighas land of Ram Singh, it is stated that out of said land 100 bighas 14 biswas have already been sold to Hari Singh which he got recorded in the names of grandsons of Ram Singh (who are petitioners no. 2 to 5 of writ petition no. 1083 (M/S) of 2004). It is alleged that Ram Singh has not filed any revision against the order of Settlement Officer of Consolidation. It is further stated in the Counter affidavit that the petitioners who have relied on the documents (Annexure 17 to writ petition no. 1083 (M/S) 2004) does not belong to village Jagannath Pur but to village Banskhera Khurd. In para 31 of the counter affidavit in writ petition no. 1083 it is stated that in the said writ petition in para 11, petitioner claimed that Ram Singh owned 479 Bighas while in para 14 they alleged it to be 243 Bighas 4 Biswas and in para 24 they claimed that Ram Singh was entitled to 415 Bighas 19 Biswas as such the averments of the petitioners are self contradictory. In the counter affidavit filed in writ petition no. 1084 (M/S) 2004, respondents no. 10 to 39 also have made more or less the same averments as mentioned in above counter affidavit.

7) I heard learned counsel for the parties at length and perused affidavits, counter affidavits along with the annexures annexed there to in all the three cases.

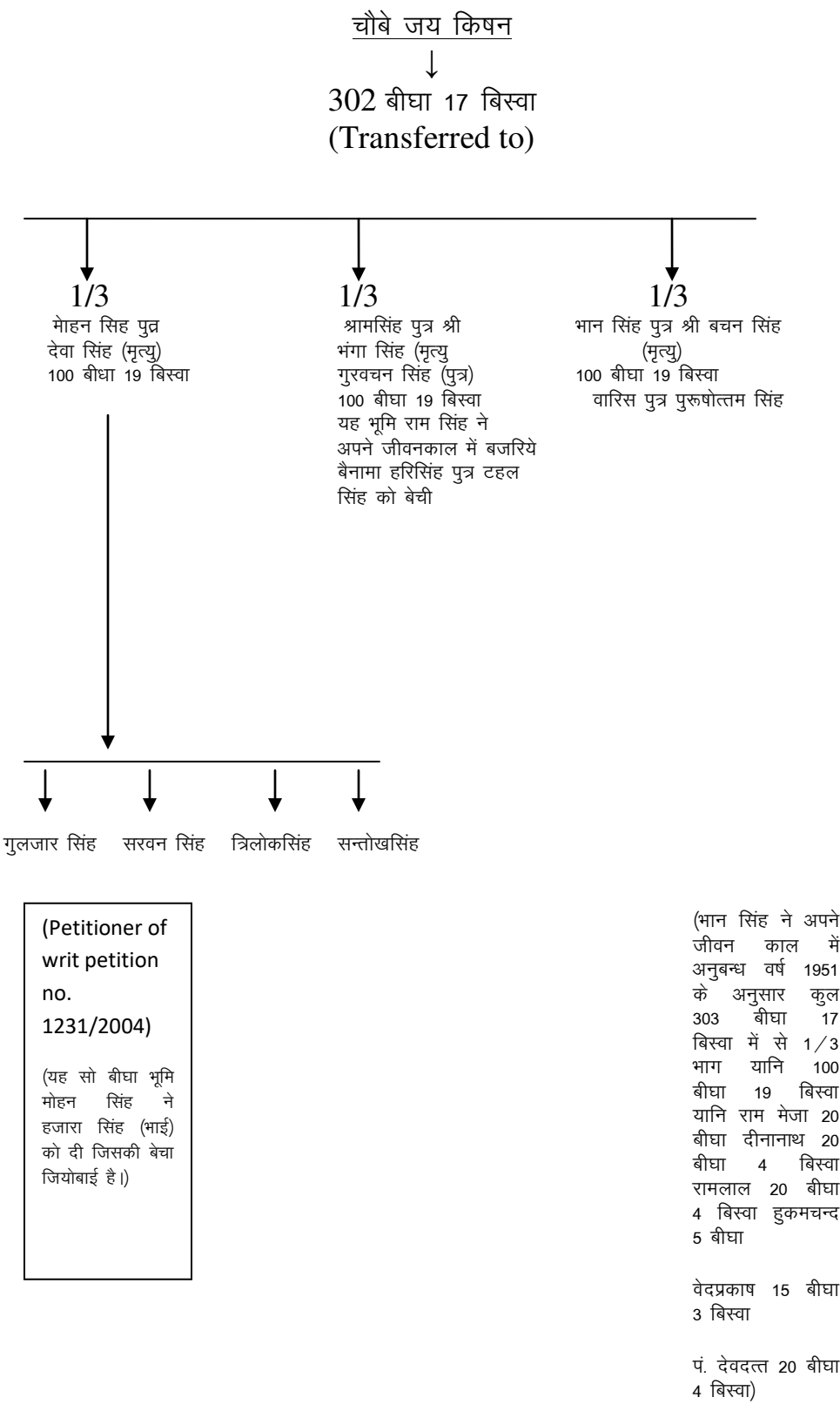
8) This Court in its supervisory and revisional jurisdiction conferred under article 226 read with article 227 of the Constitution of India, has to see if the impugned order dated 20.10.2004 passed by respondent no. 1, suffers from any illegality or if finding contained therein are perverse.

9) Before further discussions, it is pertinent to mention here that Consolidation proceedings in Vill-Jagannath Pur started a way back in the year 1970 and order of Consolidation Officer under Section 9 (A) of U.P. Consolidation and Holdings Act, 1953 was passed in the year 1971. The said order of Consolidation Officer was challenged through an appeal before Settlement Officer of Consolidation by Hari Singh, Mohan Singh which were disposed of in the year 1974 and revisions were preferred before Dy. Director of Consolidation who in its turn dismissed the revisions on 07.07.1975 (copies of these orders are on the record with the affidavits filed by the parties). The said order dated 07.07.1975 was challenged by Mohan Singh before Allahabad High Court through writ petition no. 7625 of 1975. The same was disposed of by the said High Court vide its judgment and order dated 17.10.1979, quashing the order dated 07.07.1975 and directing Dy. Director of Consolidation to decide the revision afresh on merits. Copy of judgment and order of Allahabad High Court which is at page 63 to 69 of the writ petition no. 1084 (M/S) 2004 shows that Allahabad High Court felt that the Dy. Director of Consolidation did not record his own findings and has in substance directed to implement the order dated 31.08.1959 of the Sub-Divisional Officer regarding Khatas of the share holders. The last sentence before the operative operation of the judgment directs the Dy. Director of Consolidation to consider cases of parties on facts as well as law. This Court is of opinion that every time in such a old case it is not just and proper to

quash the orders on technical grounds and force the litigants to go back again and again to litigate on the same point. In other words now in this round of litigation, after 25 years of the order passed by the Allahabad High Court, this Court should not go beyond examining if the directions of the Allahabad High Court were complied with by Dy. Director of Consolidation in disposing of the revision afresh or not.

10) Perusal of the impugned order dated 20.10.2004 shows that this time the Dy. Director Consolidation, Keeping in view of the directions of the Allahabad High Court has given his own findings also as to the claims of the parties in respect of the matter in dispute. Learned counsel for the petitioners of all the three writ petitions argued before me that share of one or the other is being shown to be less than what they had claimed. It is further argued by all the petitioners that as to their share, claims were not properly considered. I may remind it here that this Court is exercising its jurisdiction in supervisory-cum-revisional power and cannot decide the intricate questions of facts relating to shares. Rather, from the perusal of the impugned order, it is clear that in a detailed judgment of 14 pages, learned Dy. Director of Consolidation has given reasons for its findings on shares of each one of the parties. In the circumstances, it cannot be said that the Dy. Director of Consolidation has not complied with the direction of Allahabad High Court while disposing of the writ petition.

11) Without going into factual details, however, it is necessary to have an idea regarding how the land in question was derived by the parties for which the copies of charts filed with the counter affidavits of Kartar Singh are being reproduced below:-



लाला राधेप्याम
(1486)
(Transferred to)

मोहन सिंह पुत्र देवा सिंह 464 बीघा 14 बिस्वा	आत्मा सिंह पुत्र झण्डा सिंह (मृत्यु) 182 बीघा 15 बिस्वा	सोहनसिंह पुत्र किषन सिंह (मृत्यु) 185 बीघा 15 बिस्वा	सौदागरसिंह पुत्र अतरसिंह (मृत्यु) 279 बीघा 12 बिस्वा	भान सिंह पुत्र बवनसिंह (मृत्यु) 185 बीघा 15 बिस्वा	रामसिंह पुत्र भंगा सिंह (मृत्यु) 185 बीघा 15 बिस्वा
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गुलजार सिंह	सरवन सिंह	त्रिलोकसिंह	सनतोखसिंह
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(petitioners of writ petition no. 1231 (M/S) 2004

श्री मोहन सिंह ने

100 बीघा भूमि गुलजार सिंह पुत्र को 100 बीघा

भाई करतार सिंह व लखमीर सिंह (भतीजों) को दी।

जगीरसिंह	बख्शीष सिंह	अजायब सिंह	बलबीर सिंह
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(Contesting respondents)

(not petitioners) गुरुबचन सिंह

जागीरसिंह पुत्र श्री आत्मा सिंह सरदूर सिंह पुत्र श्री तेजा सिंह सरतासिंह पुत्र झण्डा सिंह

()Petitioner of writ petition no. 1084 of 2004

कप्पीरसिंह हीरासिंह छिन्दसिंह गोपाल पुत्र कालासिंह (मृत्यु) चननसिंह पुत्र जागीर सिंह

मुख्यार सिंह गुददयालसिंह गुरमुखसिंह लखविन्दसिंह गोपालसिंह

करतारसिंह
पुत्र बीरसिंह

उधमसिंह पुत्र
दया सिंह
(मृत्यु)

स्वर्णसिंह

शमीरसिंह (क्रेता)

बलबीरसिंह पुत्र आत्मासिंह (क्रेता)

From the impugned order dated 20.10.2004 read with above charts and deeds filed by the parties, as annexures, makes it is clear how the parties have got the shares given to them by learned Dy. Director Consolidation. Perusal of the entries of basic year which are field as Annexure 2 to 6 to writ petition no. 1084 and Annexure CA-5 to the counter affidavit filed in writ petition no. 1083 and Annexure-6 to the writ petition 1083 as well as the Annexure-5 to writ petition no. 1231 of 2004 corroborate the findings of the learned Dy. Director Consolidation. The parties have also field the copies of the sale deed and lease deed through which initially the land in question was transferred by Zamindar Chaube Jai Kishan and Zamindar Lala Radhey Shyam to the ancestors of the party.

12) Learned counsel for the petitioners argued that the learned Dy. Director of Consolidation has wrongly shown some of the plots submerged into river bed. This Court is not in a position to disbelieve what the Dy. Director Consolidation has stated unless the contrary evidence is on record. It is possible that with the passage of time some part of the land might have submerged in the river, as Annexure-1 to writ petition no. 1084 of 2004, which is copy of lease deed executed by Radhey Shyam in 1950, shows at its page 2 that- “Araji Banjar Aur Vidhar Kham hai” . As far as Annexure-7 field with the writ petition no. 1083 of 2004 is concerned, it shows that the lease of land in favour of Bhan Singh pertains to a different Village-Bhasfkhera Khurd and not Jagannath Pur.

13) Lastly learned counsel for the petitioners argued that after the creation of Uttaranchal, Additional District Magistrate, Udham Singh Nagar had no jurisdiction to exercise power of Dy. Director of Consolidation. In the opinion of this Court, the

submission appears to be misconceived for the reason that all notifications issued by the Govt. of U.P. are applicable in Uttaranchal under section 86 of U.P. Reorganization Act, 2000 read with Section 88 of the said act. The relevant provisions of sections are being reproduced below:

“86. Territorial extent of laws- The provisions of Part II shall not be deemed to have affected any change in the territories to which the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1961 (U.P. Act 1 of 1961) and nay other law in force immediately before the appointed day, extends or applies, and territorial references in any such law to the State of Uttar Pradesh shall, until otherwise provide by a competent Legislature or other competent authority be construed as meaning the territories within the existing State of Uttar Pradesh before the appointed day.

88. Power to construe laws- Notwithstanding that no provision or insufficient provision has been made under Section 87 for the adaptation of law made before the appointed day, any court, tribunal or authority, required or empowered to enforce such law may, for the purpose of facilitating its application in relationto the State of Uttar Pradesh or Uttaranchal, construe the law in such manner, without affecting the substance, as may be necessary or proper in regard to the matter before the court, tribunal or authority.”

14. In view of the above discussions, this Court finds no illegality in the impugned order dated 20.10.2004 passed by the respondent no. 1 nor there appears any perversity in the findings of said authority. Therefore, all the three writ petitions are liable to be dismissed,. Accordingly, writ petition no. 1083

(M/S) of 2004, writ petition no. 1084 (M/S) of 2004 and writ petition no. 1231 (M/S) of 2004 are dismissed. No order as to costs.

(Prafulla C. Pant, J.)

Dt: November 19, 2004

Sweta